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Date: JULY 10, 2006

To: EXAMINER CAI, WAYNE H.
U.S. PATENT AND TRADEMARK OFFICE
Fax #: (571) 273-8300

From: FRANK C. NICHOLAS
Phone #: (847) 424.2521

Client/Matter No.: GP-301610 (2760/26)

of Pages: 23
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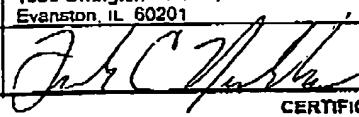
TRANSMITTAL FORM		Attorney Docket No	GP-301610 (276026)	RECEIVED
(to be used for all correspondence after paper filing)		Application Number	10/040,049	CENTRAL FAX CENTER
		Filing Date	NOVEMBER 7, 2001	JUL 10 2006
		First Named Inventor	WILLIAM E. MAZZARA, JR	
		Group Art Unit	2681	
		Examiner	CAI, WAYNE H.	

ENCLOSURES (check all that apply)		
<input type="checkbox"/> Amendment	<input type="checkbox"/> Assignment Papers	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input type="checkbox"/> After Final	<input type="checkbox"/> Drawing Sheets	<input checked="" type="checkbox"/> Appeal Brief
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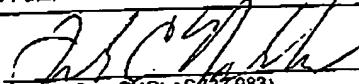
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					total add'l fee	\$ 0	total add'l fee	\$ 0

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	FRANK C. NICHOLAS Registration No. 33,983 CARDINAL LAW GROUP 1603 Orrington Avenue, Suite 2000 Evanston, IL 60201		
Signature			Date <u>July 10, 2006</u>

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Attorney Docket No.	GP-3D1610 (278026)
Application Number	10/040,049
Filing Date	NOVEMBER 7, 2001
First Named Inventor	WILLIAM E. MAZZARA, JR.
Group Art Unit	2681
Examiner	CAI, WAYNE H

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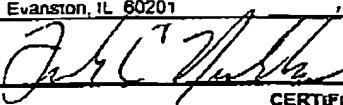
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CALCULATION OF FEE

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Total		Minus		0	x \$25=	0	x \$50=	
Indep.		Minus		0	x \$100=	0	x \$200=	
First Presentation of Multiple Dep. Claim					+ \$180=	—	+ \$360=	
					total add'l fee	\$ 0	total add'l fee	\$ 0

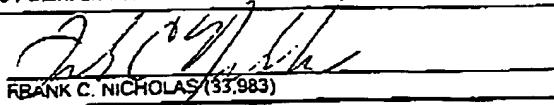
SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	FRANK C. NICHOLAS Registration No. 33,983 CARDINAL LAW GROUP 1603 Orrington Avenue, Suite 2000 Evanston, IL 60201
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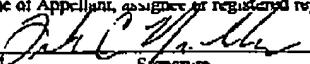
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FRANK C. NICHOLAS (33.9X3)
Name of Appellant, assignee or registered representative

Signature
July 10, 2006
Date of Signature

PATENT
Case No. GP-301610
(2760/26)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re patent application of:)
WILLIAM E. MAZZARA, JR., ET AL.) Examiner: CAI, WAYNE H.
Serial No.: 10/040,049)
Filed: NOVEMBER 7, 2001) Group Art Unit: 2681
For: METHOD FOR PROVIDING) Conf. No.: 1827
MULTI-PATH COMMUNICATION)
FOR A MOBILE VEHICLE)

APPEAL BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313

Dear Sir:

Please consider Appellant's appeal brief as follows.

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1. REAL PARTY IN INTEREST

The real party in interest is Assignee General Motors Corporation, a corporation having an office and a place of business at 300 Renaissance Center, Detroit, Michigan, 48265-3000.

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2. RELATED APPEALS AND INTERFERENCES

Appellant and the undersigned attorneys are not aware of any appeals or any interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

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3. STATUS OF CLAIMS

Claims 1-24 were cancelled.

Claims 25, 37, and 36 were rejected under 35 U.S.C. §112 as failing to comply with the enablement requirement.

Claims 25, 34, 37, and 46 were rejected under 35 U.S.C. §102(e) as anticipated by United States Patent Application Publication 2001/00110033A1 to Yamashita ("Yamashita").

Claims 26, 33, 35, 38, and 45 were rejected under 35 U.S.C. §103(a) as unpatentable over Yamashita.

Claims 27-32 and 39-44 were rejected under 35 U.S.C. §103(a) as unpatentable over Yamashita in view of United States Patent 6,748,246B1 to Khullar ("Khullar").

Claim 36 was rejected as unpatentable under 35 U.S.C. §103(a) over Yamashita in view of United States Patent 6,741,870B1 to Holmstrom.

Claims 25-46 are the claims on appeal. *See, Appendix.*

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4. STATUS OF AMENDMENTS

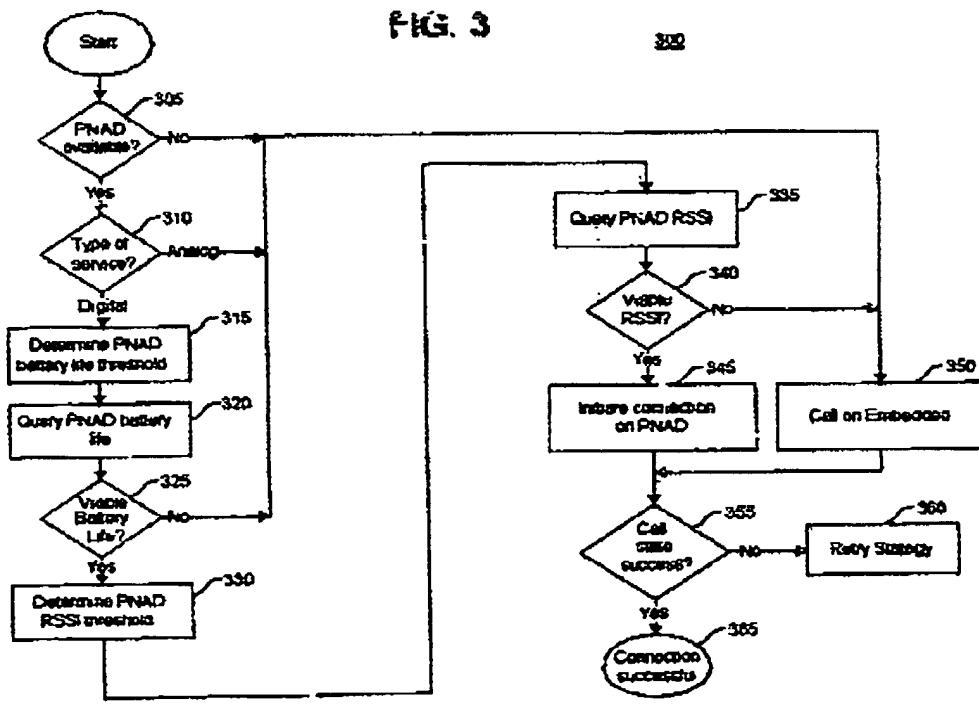
All amendments have been entered.

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5. SUMMARY OF CLAIMED SUBJECT MATTER

In this summary of claimed subject matter, all citations are to the specification of United States Patent Application 10/040,049. Further, all citations are illustrative only and support for the cited element may be found elsewhere in the specification.

A method for connecting to a network includes receiving a network connection request at a system master; determining availability 305, 350 of at least one embedded device 205, the embedded device embedded in a vehicle 110, and at least one portable network access device 245, based on the network connection request, determining capability 310, 315 of the at least one embedded device and at least one portable network access device based on the determined availability; and initiating a connection to the network using one of the at least one embedded device 350 or at least one portable network access device 345 based on the capability determination. See, e.g. FIG. 3 and page 6, line 17 – page 11, line 7:



A computer usable medium including a program for connecting to a network includes computer readable code for receiving a network connection request at a

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system master; computer readable code for determining availability 305, 350 of at least one embedded device 205, the embedded device embedded in a vehicle 110, and at least one portable network access device 245, based on the network connection request, computer readable code for determining capability 310, 315 of the at least one embedded device and at least one portable network access device based on the determined availability; and computer readable code for initiating a connection to the network using one of the at least one embedded device 350 or at least one portable network access device 345 based on the capability determination.

A system for connecting to a network includes means for receiving a network connection request at a system master; means for determining availability 305, 350 of at least one embedded device 205, the embedded device embedded in a vehicle 110, and at least one portable network access device 245, based on the network connection request, means for determining capability 310, 315 of the at least one embedded device and at least one portable network access device based on the determined availability; and means for initiating a connection to the network using one of the at least one embedded device 350 or at least one portable network access device 345 based on the capability determination.

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6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 25, 37, and 46 were rejected under 35 U.S.C. §112 as failing to comply with the enablement requirement.

Claims 25, 34, 37, and 46 were rejected under 35 U.S.C. §102(e) as anticipated by Yamashita.

Claims 26, 33, 35, 38, and 45 were rejected under 35 U.S.C. §103(a) as unpatentable over Yamashita.

Claims 27-32 and 39-44 were rejected under 35 U.S.C. §103(a) as unpatentable over Yamashita in view of Khullar.

Claim 36 was rejected as unpatentable under 35 U.S.C. §103(a) over Yamashita in view of Holmstrom.

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7. ARGUMENTS

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The §112 rejections

The §112 rejections are traversed.

Claims 25, 37, and 46 were rejected as indefinite. The Examiner alleges that either the Examiner or one skilled in the art would not know how the step of determining availability and the step of determining capability would be accomplish [sic].

35 U.S.C. §112 requires only that the claims set out and circumscribe the invention with a reasonable degree of precision and particularity. The definiteness of the language must be analyzed, not in a vacuum, but in light of the teachings of the disclosure as it would be interpreted by one of ordinary skill in the art. See, MPEP §2106.

The definiteness of the language is illustrated at pages 6-11 of the specification, and FIG. 3. For example, the paragraph starting at page 6, line 23 describes the embedded device, and the paragraph beginning on page 7, line 10 describes the portable network access device. In another example, the paragraph starting on page 7, line 22 describes the link between the embedded device and portable network access device.

Appellants intentionally claim "and" – Appellants intentionally do not claim "or." Appellants appreciate the Examiner's citations from their specification, and request that the Examiner consider the claims, not in a vacuum, but in light of how the claims would be interpreted by one of ordinary skill in the art.

The claimed method requires determining both the availability (see the 'determining availability' clause) *and* capability (see the 'determining capability' clause) of *both* the at least one embedded device and the at least one portable network device, prior to initiating a connection based on the determined capability. The Examiner's proposed modifications would change the invention, and modify the scope of the claims.

Furthermore, the Examiner's explanation of the objection rings hollow. Specifically, the Examiner appears to be confused by the description at page 9, lines 5-7, "determining if a more reliable service is available on a portable network access

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device (PNAD) 245 than the service provided on the embedded device 205." The Examiner construes this statement as determining one *or* the other, but does not explain how a determination of reliability can be made *without determining both*. The Examiner also cites to FIG. 3 as causing uncertainty, but fails to indicate how an embedded device can be used if the embedded device is not available. Additionally, FIG. 3 illustrates an embodiment of a method 300 to determine if a more reliable service is available on a portable network device than the service provided on the embedded device – method 300 is determining if the network access is better on the portable network device than the embedded device and therefore uses the embedded device as the base – method 300 essentially presumes the availability of the embedded device.

Strangely, the Examiner asserts that the specification does not show one skilled in the art the method of determining the availability of both at least one embedded device and the at least one PNAD. The Examiner further indicates that the "written original specification" only suggests one skilled in the art to determine availability of either at least one embedded device or the at least one PNAD. See, page 4 of the March 15, 2006 office action. This assertion is entirely unsupported. At a minimum, any suggestion that one of ordinary skill in the art entirely lacks the skills suggested by the Examiner ought to be supported by a finding or evidence of the level of skill in the art, or lack thereof as implied by the Examiner.

With respect to the argument that Appellants' "disclosure is different from what is being claimed" on page 4 of the March 15, 2006 office action, Appellant notes that the "and" language, that appears to be the source of this part of the Final Action, was part of the original claims, and therefore the disclosure is not different from what is being claimed.

Withdrawal of the §112 rejections and objections is requested.

The §102(e) rejections

Claims 25, 34, 37 and 46 were rejected as anticipated by Yamashita. This rejection is traversed.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.

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Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention *must be shown in as complete detail as* is contained in the . . . claim. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Thus, to warrant the §102(e) rejection, the references cited by the Examiner must show each and every limitation of the claims in complete detail. Appellants respectfully assert that the cited reference fails to do so.

Yamashita does not disclose "initiating a connection to the network using one of the at least one embedded device or at least one portable network access device based on the capability determination". At most, Yamashita discloses determining whether to connect to a network using a first or second radio communication section (radio communication sections 1, 2) based on a determination of whether the vehicle is in "high speed transit". See ¶ 34, Yamashita.

Yamashita discloses two devices for "connecting to a network": radio communication section 1 is "a communication system not warranting communication capability when in fast transit, preferably means of communication which makes possible connection to a cordless system such as PHS" and radio communication section 2 is "a communication system warranting communication when in fast transit, preferably means of communication such as a portable telephone." See ¶29, Yamashita.

In view of these two communication systems, Yamashita notes that if the bearer, while riding a vehicle, stands by or initiates a call via the cordless system, the conversation may be interrupted when the vehicle accelerates beyond a certain speed. See ¶7, Yamashita. In view of this possibility, Yamashita attempts to provide an apparatus for mobile communications capable of automatically accessing the most suitable system for intended communication, and a system capable of automatically forbidding access to any communication system unsuitable for communication during high speed transit. See ¶9-10, Yamashita. Additionally, Yamashita discloses that the apparatus includes a control section to judge whether communication during high speed transit is possible, and if possible, forbids a radio communication section communicating with a system inappropriate for communication during high speed transit from standing by or initiating a call. See ¶11, Yamashita.

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In distinct contrast, claims 25, 37, and 46 require initiating a connection to the network using one of the at least one embedded device or at least one portable network access device based on the capability determination. Claims 25, 37, and 46 do not claim initiating the connection based on the speed of the vehicle (i.e. in high speed transit), but rather based on the determined capability.

Claim 34 depends directly from claim 25, and is therefore not anticipated by Yamashita for at least the same reasons.

Withdrawal of the rejections to claims 25, 34, 37, and 46 is requested.

The §103(a) rejections over Yamashita

The §103(a) rejections of claims 26, 33, 35, 38, and 45 as unpatentable over Yamashita are traversed.

Claims 26, 33 and 35 depend directly from claim 25, and are therefore not unpatentable over Yamashita for at least the same reasons as claim 25. Claims 38 and 45 depend directly from claim 37, and are therefore not unpatentable over Yamashita for at least the same reasons as claim 37.

The §103(a) rejections over Yamashita in view of Khullar

The §103(a) rejections of claims 27-32 and 39-44 as unpatentable over Yamashita in view of Khullar are traversed. Claims 27-32 depend directly from claim 25, and are therefore not unpatentable over Yamashita in view of Khullar for at least the same reasons as claim 25. Claims 39-44 depend directly from claim 37, and are therefore not unpatentable over Yamashita in view of Khullar for at least the same reasons as claim 37.

Additionally, there is no motivation to combine Yamashita with Khullar. The mere fact that Yamashita can be modified in view of Khullar to obtain the claimed invention (which Appellants deny) does not render the resultant modification obvious unless the prior art also suggests the desirability of the combination. See, *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). The Examiner's cited motivation, "to determine the ability to make a connection or service, and make the communication more reliable and efficient" fails to note exactly where either reference makes such a suggestion. The mere fact that references can be modified is

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not support for an obviousness rejection. Although a prior art device "may be capable of being modified to run the way the apparatus is claimed, there must be a suggestion or motivation in the reference to do so." 916 F.2d at 682, 16 USPQ2d at 1432.). See also *In re Fritch*, 972 F.2d 1260, 23 USPQ2d 1780 (Fed. Cir. 1992) (flexible landscape edging device which is conformable to a ground surface of varying slope not suggested by combination of prior art references).

The §103(a) rejections over Yamashita in view of Holmstrom

The §103(a) rejections of claim 36 as unpatentable over Yamashita in view of Holmstrom is traversed. Claim 36 depends directly from claim 25, and are therefore not unpatentable over Yamashita in view of Holmstrom for at least the same reasons as claim 25.

Withdrawal of the rejections to claims 26-33, 35-36, and 38-45 is requested.

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SUMMARY

The Appellant respectfully submits that claims 1-22 herein fully satisfy the requirements of 35 U.S.C. §§ 102, 103 and 112. In view of the foregoing, favorable consideration and passage to issue of the present application is respectfully requested. If any points remain in issue that may best be resolved through a personal or telephonic interview, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

Dated: July 10, 2006

Respectfully submitted,
WILLIAM E. MAZZARA, JR., ET. AL.

GENERAL MOTORS CORPORATION
General Motors Legal Staff
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CLAIMS APPENDIX

25. A method for connecting to a network, the method comprising:
receiving a network connection request at a system master;
determining availability of at least one embedded device, the
embedded device embedded in a vehicle, and at least one portable network access
device, based on the network connection request;
determining capability of the at least one embedded device and at least
one portable network access device based on the determined availability; and
initiating a connection to the network using one of the at least one
embedded device or at least one portable network access device based on the
capability determination.
26. The method of claim 25 wherein the system master is the embedded
device.
27. The method of claim 25, wherein the capability determination is based
on factors selected from the group consisting of battery life viability, relative signal
strength indication, service availability, type of service and call state
28. The method of claim 27, wherein the battery life viability is based on a
power state and a power life.
29. The method of claim 27, further comprising:
determining a calibrated threshold for the battery life viability.
30. The method of claim 29, further comprising:
determining the battery life viability if the calibrated threshold is
exceeded.

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31. (Previously Presented) The method of claim 30, further comprising:
determining a calibrated threshold for the received signal strength
indication.

32. The method of claim 31, further comprising:
determining the received signal strength indication if the calibrated
threshold is exceeded.

33. The method of claim 25, wherein the type of service is analog
communication, digital communication, satellite communication, and global system
for mobile communication.

34. The method of claim 25 wherein receiving a network connection
request comprises establishing a link between the embedded device and the portable
network access device.

35. The method of claim 25 wherein the embedded device includes a
global positioning receiver capable of providing vehicle positioning information.

36. The method of claim 25 further comprising retrying the connection
initiation if the connection was not established.

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37. A computer usable medium including a program for connecting to a network, the medium comprising:

computer readable code for receiving a network connection request at a system master;

computer readable code for determining availability of at least one embedded device, the embedded device embedded in a vehicle, and at least one portable network access device based on the network connection request;

computer readable code for determining capability of the at least one embedded device and at least one portable network access device based on the determined availability; and

computer readable code for initiating a connection to the network using one of the at least one embedded device or at least one portable network access device based on the capability determination.

38. The medium of claim 37 wherein the system master is the embedded device.

39. The medium of claim 37, wherein the capability determination is based on factors selected from the group consisting of battery life viability, relative signal strength indication, service availability, type of service and call state

40. The medium of claim 38, wherein the battery life viability is based on a power state and a power life.

41. The medium of claim 38, further comprising:

computer readable code for determining a calibrated threshold for the battery life viability.

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42. The medium of claim 41, further comprising:
computer readable code for determining the battery life viability if the calibrated threshold is exceeded.
43. The medium of claim 37, further comprising:
computer readable code for determining a calibrated threshold for the received signal strength indication.
44. The medium of claim 43, further comprising:
computer readable code for determining the received signal strength indication if the calibrated threshold is exceeded.
45. The medium of claim 37, wherein the type of service is analog communication, digital communication, satellite communication, and global system for mobile communication.
46. A system for connecting to a network, the system comprising:
means for receiving a network connection request at a system master;
means for determining availability of at least one embedded device, the embedded device embedded in a vehicle, and at least one portable network access device based on the network connection request;
means for determining capability of the at least one embedded device and at least one portable network access device based on the determined availability; and
means for initiating a connection to the network using one of the at least one embedded device or at least one portable network access device based on the capability determination.

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Evidence Appendix

None

Related Proceedings Appendix

None.